

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #5	CCRB Case #: 201710412	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 12/16/2017 3:00 PM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 6/16/2019	EO SOL 6/16/2019	
Date/Time CV Reported Mon, 12/18/2017 3:40 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/18/2017 3:40 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			Unknown
2. POM Abel Lovera	01160	954081	081 PCT
3. DTS Mark Xylas	5149	948160	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Job Bellevue	16310	945501	081 PCT
2. SSA Erek Powers	05297	944907	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Abel Lovera	Abuse: Police Officer Abel Lovera entered § 87(2)(b)	§ 87(2)(b)
B.DTS Mark Xylas	Abuse: Detective Mark Xylas entered § 87(2)(b)	§ 87(2)(b)
C.POM Abel Lovera	Abuse: Police Officer Abel Lovera searched § 87(2)(b) Apt 2.	§ 87(2)(b)
D.DTS Mark Xylas	Abuse: Detective Mark Xylas searched § 87(2)(b) Apt 2.	§ 87(2)(b)
E. An officer	Force: An officer pointed his gun at § 87(2)(b)	§ 87(2)(b)
F. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

### Case Summary

On December 16, 2017, § 87(2)(b) filed this complaint with the CCRB over the phone. On April 3, 2018, § 87(2)(b)'s son, § 87(2)(b) was arrested on an open UF61 related to this incident and he reported that officers used force against him on December 16, 2017. The officers called IAB to report the alleged force, and a duplicate complaint was received at the CCRB on April 16, 2018.

On December 16, 2017, § 87(2)(b) went home to her building, located as § 87(2)(b) in Brooklyn, and saw officers in her building. § 87(2)(b) went to her apartment and saw that officers were inside of her apartment (**Allegation A: Abuse of authority, § 87(2)(g); Allegation B: Abuse of authority, § 87(2)(g); Allegation C: Abuse of authority, § 87(2)(g); Allegation D: Abuse of authority, § 87(2)(g).** § 87(2)(b) attempted to go upstairs to her apartment and an officer pointed his gun at her and stated, "Lady, if you don't move, I will shoot you." (**Allegation E: Force, § 87(2)(g); Allegation F: Abuse of Authority, § 87(2)(g)**)).

§ 87(2)(b), § 87(2)(g)

There are no video recordings of this incident.

### Findings and Recommendations

**Allegation A -Abuse of Authority: Police Officer Abel Lovera entered** § 87(2)(b)

**Allegation B - Abuse of Authority: Detective Mark Xylas entered** § 87(2)(b)

**Allegation C - Abuse of Authority: Police Officer Abel Lovera searched** § 87(2)(b)

**Allegation D – Abuse of Authority: Detective Mark Xylas searched** § 87(2)(b)

§ 87(2)(b) testified that upon coming home to her building, she saw officers in her building and in her apartment. § 87(2)(b) was not allowed to enter into the apartment while the officers were inside. § 87(2)(b) waited for the officers to leave before reentering the apartment. Upon reentering, she saw that her apartment was "tore up." § 87(2)(b) could not explain how it was tore up, but stated that it looked different. § 87(2)(b)'s interview was ended prematurely and she was subsequently uncooperative with the investigation, so additional details regarding the incident could not be obtained (See above.)

§ 87(2)(b) was uncooperative with the investigation.

PO Lovera and Det. Xylas were consistent in their statements. The officers testified that on December 16, 2017, they received a radio run regarding a robbery at a deli located at 1160 Broadway, which was located in the confines of the 81<sup>st</sup> Precinct. The officers received a description of a black male wearing all black. Upon pulling up to the location, the officers saw § 87(2)(b) was approximately 50 feet away from the deli and walking away from it. PO Lovera exited the vehicle and attempted to stop § 87(2)(b) to conduct a show-up ID with the complainants. Upon PO Lovera identifying himself as a police officer, § 87(2)(b) ran down Gates Avenue into § 87(2)(b) which was approximately one-half block away and located in the confines of the 83<sup>rd</sup> Precinct.

§ 87(2)(b) entered the public lobby of § 87(2)(b) and PO Lovera chased him, caught the door before it closed, and grabbed him inside a vestibule area. § 87(2)(b) began fighting with PO Lovera. § 87(2)(b) attempted to punch PO Lovera but was unsuccessful. Det. Xylas entered the vestibule and grabbed one of § 87(2)(b) arms and tried to pull it behind his back, but was unsuccessful. § 87(2)(b) then ran upstairs into the § 87(2)(b) floor apartment.

PO Lovera and Det. Xylas immediately followed § 87(2)(b) up the stairs and attempted to break open the door; however, they were too exhausted from the struggle to successfully break it open. Uniformed officers from both the 83<sup>rd</sup> Precinct and 81<sup>st</sup> Precinct arrived and broke open the door.

Det. Xylas, PO Lovera, and other uniformed officers then entered the apartment and looked for § 87(2)(b). The officers looked in the bedrooms, bathrooms, closets, under beds, and anywhere a person could fit. § 87(2)(b) was not found. The officers called ESU, aviation, and the K9 unit to look for § 87(2)(b). § 87(2)(b) was ultimately not found.

PO Lovera was taken to the hospital for injuries that he sustained during the incident, including scratches on his ear and neck, and a bruised hand and wrist. Det. Xylas prepared UF61s for assault on a police officer and for criminal mischief. On April 3, 2018, § 87(2)(b) was arrested in relation to those open UF61s.

Under the doctrine of hot pursuit, a suspect may not defeat an arrest which was set in motion in a public place by fleeing into a private space, entry is proper as long as there is an immediate and continuous pursuit of a subject from the scene of a crime. People v. Hunter, 92 AD3d 1277, 1279-1280 (2012) (**Board Review 01**)

§ 87(2)(g)  
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**Allegation – E: Force: An officer pointed his gun at § 87(2)(b)**

**Allegation – F: Abuse of authority: An officer threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that when she attempted to enter her building, that an officer pointed their firearm in her face and stated, “Lady, if you don’t move, I will shoot you.” § 87(2)(b) described

the officer as a white male in uniform and could not provide any additional details. § 87(2)(b) s interview was ended prematurely and she was subsequently uncooperative with the investigation, so additional details regarding the incident could not be obtained (See above.)

Both Det. Xylas and PO Lovera testified that they did not point their firearms at § 87(2)(b) nor did they threaten to shoot § 87(2)(b) or threaten to use any force on § 87(2)(b). The officers did not see any other officers point their firearms at § 87(2)(b) or threaten to shoot her. The officers stated that because the robbery occurred in confines of the 81<sup>st</sup> Precinct, and because § 87(2)(b) was located in the 83rd Precinct, that officers from both commands were at the building, which totaled approximately 10-30 officers. Additionally, ESU and the K9 unit were also called to the scene to look for § 87(2)(b).

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint in which § 87(2)(b) has been a party. **(Board Review 02).**
- PO Lovera has been a member of the NYPD for five years and has been a subject in four additional CCRB complaints, two of which are currently being investigated. The remaining two cases were closed as exonerated and unsubstantiated. § 87(2)(g)
- Det. Xylas has been a member of the NYPD for nine years and has been a subject in § 87(2)(b) additional CCRB complaints. The cases were closed as substantiated, exonerated, unsubstantiated, § 87(2)(b) unfounded, and complainant uncooperative. In case 201407556, an allegation of premises entered and/or searched was substantiated and he received charges, but was found not guilty at NYPD departmental trial.

#### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- On June 21, 2018, an inquiry was filed with the New York City Comptroller's Office to locate a notice of claim for § 87(2)(b). Results are pending. **(Board Review 03)**
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: 05

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date